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L A W Y E R S

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

10 In re:

11 USA COMMERCIAL MORTGAGE COMPANY,
 12 USA CAPITAL REALTY ADVISORS, LLC,
 13 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 14 LLC,
 15 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 16 USA SECURITIES, LLC,

Debtors.

17 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR

Case No. BK-S-06-10726-LBR¹

Case No. BK-S-06-10727-LBR

Case No. BK-S-06-10728-LBR²

Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

USACM LIQUIDATING TRUST'S FIRST OMNIBUS OBJECTION TO ALLOWANCE OF PROOFS OF CLAIM BASED UPON INVESTMENT IN THE BEAU RIVAGE HOMES LOAN; WITH CERTIFICATE OF SERVICE

Hearing Date: December 18, 2009

Hearing Time: 1:30 p.m.

The USACM Liquidating Trust (the “USACM Trust”) objects to the allowance of claims based upon an investment in the Beau Rivage Homes/\$8,000,000 Loan (“Beau Rivage Loan”). The USACM Trust objects because the Beau Rivage Loan was repaid by the borrower. There was \$23,356.58 in unremitted principal associated with the Beau

¹ This bankruptcy case was closed on September 23, 2008

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

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1 Rivage Loan. The USACM Trust moves that the Court allow claims to the extent they are
2 based upon unremitted principal and disallow the remainder of the Beau Rivage claims.
3

MEMORANDUM

I. JURISDICTION

5 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
6 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
7 proceeding under 28 U.S.C. § 157(b)(2)(B). The statutory predicates for the relief
8 requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.
9

II. BACKGROUND

10 On April 13, 2006 ("Petition Date"), USA Commercial Mortgage
11 Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty
12 Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC
13 ("DTDF"), USA Capital First Trust Deed Fund, LLC ("FTDF" and together with DTDF,
14 the "Funds") (collectively the "Debtors"), filed voluntary petitions for relief under chapter
15 11 of the Bankruptcy Code. The Debtors continued to operate their businesses, if any, as
16 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
17 Post-petition management of the Debtors was under the direction of Thomas J. Allison of
18 Mesirow Financial Interim Management, LLC ("Mesirow"), who served as the Chief
19 Restructuring Officer.
20

21 On January 8, 2007, the Court entered its Order Confirming the "Debtors' Third
22 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
23 2376]. Under the Plan, the USACM Trust is the successor to USACM with respect to
24 standing to seek allowance and disallowance of Claims. The USACM Trust exists as of
25 the Effective Date of the Plan, March 12, 2007. Geoffrey L. Berman is the Trustee.
26

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1 A "USA Capital Loan Summary as of February 28, 2007" prepared by Mesirow
2 indicates that the Beau Rivage Loan was repaid by the borrower. (**Exhibit A**, attached.)
3

4 There is \$23,356.58 in unremitted principal associated with the Beau Rivage Loan.
5 Scheduled claims for the unremitted principal were deemed allowed unless they were
6 superseded by a proof of claim, in which case the proof of claim was deemed allowed.
7 Attached as **Exhibit B** is a list of the Beau Rivage Claims by claimant, claim number,
8 claim amount, unremitted principal to be allowed as a claim, and approximate amount of
9 the claim objected to by the USACM Trust.

10 **III. APPLICABLE AUTHORITY**

11 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
12 will be allowed unless a party in interest objects. If a party in interest objects to the proof
13 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
14 shall allow the Claim except to the extent that the Claim is "unenforceable against the
15 debtor . . . under any . . . applicable law for a reason other than because such claim is
16 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
17 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the Court's
18 orders.

19 **IV. OBJECTIONS TO ALLOWANCE OF CLAIMS**

20 The USACM Trust objects to the claims listed on **Exhibit B**, attached, to the extent
21 those claims are based upon funds that were repaid to the Direct Lenders from the
22 proceeds of the Beau Rivage Loan. To the extent the claims listed on **Exhibit B** are based
23 upon unremitted principal, the USACM Trust asks that the Court allow the claims.

24 The USACM Trust reserves the right to modify, supplement and/or amend this
25 Objection as it pertains to any Claim or claimant herein. The USACM Trust requests any
26 further relief considered to be appropriate by the Court.

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LAWYERS

1 Dated: November 18, 2009.

2 **LEWIS AND ROCA LLP**

3

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Counsel for USACM Liquidating Trust

11 Copy of the foregoing and pertinent
12 Portion of Exhibit B mailed by first class
Postage prepaid U.S. Mail on
13 November 18, 2009 to all parties listed on
Exhibit B attached.

14
15 /s/ Leilani Lista

Leilani Lista

16 Lewis and Roca LLP

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